

**REMARKS**

Applicants have reviewed the Office Action mailed on December 29, 2004 and offer the following remarks. Applicants request reconsideration in view of the following remarks.

***Allowable Subject Matter***

Applicants acknowledge, with thanks, that the Examiner has stated that claims 25-26 are allowable.

***Rejection under 35 USC §101 and §112, 1<sup>st</sup> paragraph:***

Applicants acknowledge, with thanks, that the Examiner has withdrawn the rejection of Claims 4, 8, 9 and 24-30 under 35 USC §101 and §112, 1<sup>st</sup> paragraph on page 3 of the Office Action.

***Rejection Under 35 U.S.C. §102(e)***

The Examiner has rejected claims 4, 8, 9, 24 and 27-30 under 35 U.S.C. §102(e) as being anticipated by Policky *et al.*, (U.S. Patent Application No. 2004/0029125 (Serial Number 10/258,080) and WO 01/79468).

The Examiner stated in the Office Action mailed June 3, 2004, Paper No. 13, that the priority of the '125 and '468 publications has been claimed to U.S. Provisional Application No. 60/197,590, (filed on April 13, 2000).

The Applicants respectfully traverse the rejection. The Examiner states that "SEQ ID NO: 1 in that ['590] provisional application is encoded by the polynucleotide of SEQ ID NO: 2." [clarification added by Applicants] It is unclear to the Applicants whether the Examiner is referring to SEQ ID NO: 2 of the provisional '590 application or of the present application. The alignment provided by the Examiner lists SEQ ID NO: 11

of the '125 application as being encoded by SEQ ID NO: 2 of the present application. However, with the exception of assertions, the Examiner has not yet provided evidence that SEQ ID NO: 11 of the '125 application is the same as SEQ ID NO: 1 of the provisional application, thus providing factual evidence that the '125 application has support in the provisional '590 application, such as an alignment of the '125 and '590 sequences. The Examiner has also not provided factual evidence that either the '125 or the '590 applications have disclosed the nucleic acid sequence of SEQ ID NOs: 1 and 3 of the invention, particularly in light of the Examiner's finding that claims 25 and 26, and thus the polynucleotides of SEQ ID NOs: 1 and 3, are allowable. The Examiner has also not provided evidence that the '125 and '590 applications disclose any nucleic acid sequences that comprise SEQ ID NOs: 1 and 3 of the invention, or that ANY of the nucleic acids of the '125 application are "completely complementary" to SEQ ID NO: 1 as required in claim 30 of the present application, or "consist" of SEQ ID NO: 1 of the present application, as required in claim 4(b).

The Applicants maintain that the references do not teach each and every aspect of the claimed invention. However, the Applicants have cancelled claim 4 and incorporated subject matter from claim 4 into claims 8 and 30-33. Applicants reserve the right to present any deleted subject matter into a continuing application for further prosecution. Therefore, Applicants request that the Examiner withdraw the rejection.

***Art of Interest:***

The Examiner has also noted U.S. Publication No. 2004/0029221 (Baker *et al.*; Serial No. 10/206,915) which the Examiner states discloses SEQ ID NOs: 521 and 522, to be 100% identical with SEQ ID NO: 2, and the corresponding polynucleotide. The '221 application which claims priority to U.S. Provisional Application 60/209,832, filed June 5, 2000.

The Applicants thank the Examiner for her note that the "priority claim to provisional application No. 60/209,832 has not been verified.

The Applicants additionally acknowledge the remarks by the Examiner regarding the Applicants' arguments. The arguments set forth the by Applicants in their Reply filed

October 4, 2004 are incorporated herein. Applicants' response regarding a potential assertion of anticipation of claims reciting the polypeptide of SEQ ID NO: 2 is addressed under the section discussing the rejection under 35 U.S.C. 102(e), *supra*.

### Conclusion

Claims 1-7 and 10-23 stand cancelled in the present Reply and new claims 31-33 were added. Applicants confirm that claims 8-9 and 24-33 are pending. The amendments to claims 8 and 30 are supported by the original claims and the specification as filed, and thus new matter has not been introduced.

In view of the above remarks, Applicants respectfully submit that the application and claims are in condition for allowance, and request that the Examiner reconsider and withdraw all outstanding rejections. If for any reason the Examiner finds the application other than in condition for allowance, the Examiner is invited to call the undersigned agent should the Examiner believe a telephone interview would advance prosecution of the application.

Respectfully submitted,

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Date: March 29, 2005

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